

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1848 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? :

AKBARKHAN MAHMEDKHAN PATHAN

Versus

SHAHHERBANU ABBAS HASSAIN BUKHARI

Appearance:

MR PV NANAVATI for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/08/2000

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act against the concurrent judgements and decrees of the trial Court as well as the appellate Court passing and confirming the decree for eviction and

recovery of arrears of rent and mesne profits, etc. against the revisionist.

2. The brief facts giving rise to this revision are as under:-

3. Out of the four rooms belonging to the plaintiff, one was let out by the plaintiff to the defendant on monthly rent of Rs.60/-. A rent note dated 5.12.1974 was executed by the tenant in favour of the landlady. According to the landlady the defendant paid rent up to 30.09.1975 and from 1.10.1975 the defendant fell in arrears of rent amounting to Rs.2,400/- for the period up to 31.01.1979. Notice dated 22.2.1979 was issued to the defendant-revisionist which was served on him. He did not vacate the room in dispute. Hence, suit for eviction was filed. It seems that another ground for eviction was denial of title by the tenant.

4. The tenant-revisionist in his written statement pleaded that the plaintiff-landlady is not owner of the disputed room and as such she has no right to file suit for eviction. The relationship of the landlord and tenant between the parties was denied by the revisionist. On the other hand, after denying the relationship of the landlord and tenant between the parties, the tenant had set up his own title in the disputed room on the basis of agreement to sell executed in his favour by one Rabiya Bibi.

5. The trial Court found that the relationship of landlord and tenant between the parties was established. It further found that the defendant-tenant has denied the title of the landlady. He, however, found that the defendant-tenant was in arrears of rent as alleged by the plaintiff. Notice of demand and eviction was found to be valid. With these findings, the suit was decreed.

6. The tenant preferred an appeal which was also dismissed. Hence this Revision.

7. I have heard Shri P.V. Nanavati, the learned counsel for the revisionist and Shri S.M. Shah, the learned counsel for the respondent. I have also examined the judgements of the trial Court as well as the appellate Court. It is a case of concurrent findings of fact recorded by two Courts below. Hence, scope of interference in this revision is very much limited. It has to be seen whether the judgements of two courts below are in accordance with law or not. It is not in the jurisdiction of the revisional Court in case where

concurrent findings of fact had been recorded by the two Courts below to reappraise the evidence and come to a different conclusion than that arrived at by the two Courts below nor the Revisional Court can substitute its own findings on reappraisal of the evidence on record. With these limitations it is proposed to examine whether the judgements and decrees below are in accordance with law or not.

8. Shri P.V. Nanavati, learned counsel for the revisionist has vehemently argued that on the basis of agreement to sell alone and in the absence of registered sale deed in respect of four rooms, the plaintiff-landlady cannot be said to be owner of these four rooms and as such she cannot be treated as a landlady nor she is entitled to a decree for eviction against the revisionist on grounds of non payment of rent. He further pointed out that there is an agreement to sell in favour of tenant also in respect of one of the rooms and as such the tenant is not liable to be evicted. During arguments it was urged that it is not case of denial of title of the landlady rather, it is a case where there is total denial of relationship of landlord and tenant between the parties.

9. At the outset, it may be mentioned that the question of ownership in the disputed room is not to be decided in such revision or in such suit and appeal. The only point for consideration in such suit should have been the relationship of landlord and tenant between the parties. The findings of the two Courts below on question of relationship of landlord and tenant between the parties is a finding on question of fact, which cannot be easily interfered by the revisional Court unless it is found to be perverse or is found to be based on inadmissible evidence or is found to be based on no evidence at all. Unless these conditions exist, the findings of fact cannot be interfered in a revision u/s 29(2) of the Bombay Rent Act.

10 The "landlord" has been defined u/s 5(3) of the Bombay Rent Act which means a person for the time being receiving or entitled to receive rent in respect of any premises whether on his own account or on account or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant and includes any person not being a tenant who from time to time derives title under a landlord and further includes in respect of his sub-tenant a tenant who has sublet any

premises.

11 Thus, it is clear from the above definition of landlord u/s 5(3) of the Act that the concept of ownership is not introduced in the definition of landlord under the aforesaid section.

12 The "tenant" has been defined u/s 5(11) of the Act to mean a person by whom or on whose behalf rent is payable for any premises and includes inter alia persons mentioned in sub-clauses (a) to (c) and (ii) of Section 5 (11) of the Act.

13 It is, thus, clear that tenant is a person by whom and on whose behalf rent is payable for any premises and landlord is a person who is for the time being receiving or entitled to receive rent in respect of any premises whether on his own account or for or on behalf of or for the benefit of another person or as a trustee etc.

14 In view of the above definition, it has to be kept in mind that for determining the relationship of landlord and tenant between the parties, question of ownership is not to be decided. Such question is to be decided by the competent civil court on the regular side in a civil suit filed for the purpose. If in this light, the evidence is examined, it is found that Exh.84 is the rent note executed by the revisionist-tenant in favour of the landlady. It was executed on 5.12.1974. Execution of rent note is not disputed. The rent note further shows that the tenant agreed to pay rent @ Rs.60 per month to the landlady for the disputed one room. Consequently, this is one evidence which creates the relationship of landlord and tenant between the parties for the obvious reason that the tenant agreed to pay the rent to the plaintiff and the plaintiff-landlady became the person to whom the rent is payable in respect of demised premises. The other evidence to establish relationship of landlord and tenant between the parties is the receipt exh.61 which shows that the rent was actually paid by the tenant to the landlady and even prior to the dispute having arisen, rent was paid by the revisionist to the landlady. According to the landlady, the defendant paid the rent up to 30.09.1975 and failed to pay the rent from 1.10.1975. These allegations have not been denied by the tenant-revisionist. Consequently also the respondent became the landlady to whom the rent was paid by the tenant and the tenant did pay the rent to the landlady undisputedly up to 30.09.1975. There is also mention in the judgement of the lower appellate

Court that the counterfoil rent receipts were also signed by the tenant. This also shows that the tenant not only paid the rent but also signed the counterfoils of rent receipts in token of having received the rent receipt from the landlady. There is also evidence mentioned in the judgement of the lower appellate Court that the revisionist paid the rent to the landlady for a period of about 12 months. It is also in evidence that after notice of demand was served on the tenant by the landlady, the tenant did not choose to reply the notice. This conduct of the tenant also shows that he had no intention of denying the relationship of landlord and tenant between the parties. Even if the effect of compromise in Civil Suit No.307 of 1971 is excluded, as argued by Shri P.V. Nanavati, still there is enough evidence on record to show that the relationship of landlord and tenant between the parties was duly and fully established and denial to the contrary by the tenant-revisionist could not find support from any reliable evidence on record.

15. In view of the above discussion, it is clear that the relationship of landlord and tenant between the parties as required under Section 5(3) and Section 5 (11) of the Act is fully established. The finding recorded by the lower appellate Court is based on proper and detailed consideration of evidence on record and it does not suffer from any illegality or infirmity. Consequently, the lower appellate Court was justified in holding that the relationship of landlord and tenant between the parties is established.

16. If the relationship of landlord and tenant between the parties was found to have been established, the tenant-revisionist did not get any right to deny the title of the landlady in the disputed room and if it was so denied expressly by setting up tenant's title in the demised room, this was another ground on which decree for eviction could be passed.

17. There is specific mention in the judgement of the lower appellate Court that the tenant's counsel in the lower appellate Court conceded that if the plaintiff is found to be landlady of the defendant in respect of the suit premises, the suit can be safely decreed for eviction on the ground of arrears of rent because, obviously, since the date of notice the defendant did not pay or deposit in Court the arrears of rent. It is further established from the evidence on record that more than six months' rent was due from the tenant which he failed to pay despite service of the notice of demand.

Consequently, the tenant was liable to be evicted u/s 12(2)(a) of the Bombay Rent Act. The judgement of decree passed by the lower appellate Court or by the trial Court therefore requires no interference. I do not find no merit in this revision which is hereby dismissed with no order as to costs.

(mohd)